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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

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INDEPENDENT

January 18, 2006

The Honorable David M. Barrett  
Independent Counsel  
Office of Independent Counsel  
1990 K Street NW, Suite 420  
Washington, DC 20006

Dear Mr. Barrett:

The Government Accountability Office recently provided new details on the expenditures of your office that raise serious questions regarding the reasonableness and appropriateness of your use of taxpayer dollars. According to the information from GAO, your office has been renting 11,500 square feet of space for just 5 full-time employees and has been flying consultants to Washington, DC, from across the country during a time when the final investigative report has already been filed and the investigation purportedly has been closing down.

I am writing to request an explanation of these and other puzzling expenditures incurred during your long ten and half year investigation. Before you close down your office, which I understand that you are in the process of doing, I believe that you should provide a detailed accounting of the taxpayer funds that your office has expended.

I also urge that your final report be released as soon as possible and with as little information withheld from Congress and the public as possible. There have been reports by conservative commentators that important findings you have made could remain sealed. While I have been raising questions about the justification for your continuing expenditures, I certainly do not favor any delay in the release of your report or the withholding of any findings. Given that you have now spent over \$21 million on your investigation, I believe that Congress and the public are entitled at long last to know what you have found.

### The Findings of GAO's Semi-Annual Reviews

As you know, every six months the Government Accountability Office issues a public report with summary information regarding the expenditures of independent and special counsels. As your investigation has continued over more than a decade, the reported operation costs for your office have become increasingly mystifying.

You were appointed an independent counsel in May 1995 to investigate whether former Secretary of Housing and Urban Development Henry Cisneros made false statements to the FBI about payments to an ex-mistress. Since then, your office has spent over \$21 million.<sup>1</sup>

In 1999, Mr. Cisneros pleaded guilty to a misdemeanor and paid a \$10,000 fine. In 2001, President Clinton pardoned Mr. Cisneros. In the four years leading up to Mr. Cisneros's misdemeanor plea in 1999, your office incurred \$10.2 million in expenditures.<sup>2</sup> In the over six years since then, in which there have been no additional reported indictments, your office has spent an additional \$11.6 million.<sup>3</sup> This means that over half of your investigation's total expenditures occurred after the main target agreed to a plea bargain.

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<sup>1</sup> This total is based on GAO's semi-annual reports dating back to the commencement of the investigation.

<sup>2</sup> U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 1995* (Mar. 1996) (GAO/AIMD-96-67); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 1996* (Sept. 1996) (GAO/AIMD-96-166); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 1996* (Mar. 1997) (GAO/AIMD-97-64); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 1997* (Sept. 1997) (GAO/AIMD-97-164); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 1997* (Mar. 1998) (GAO/AIMD-98-100); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 1998* (Sept. 1998) (GAO/AIMD-98-285); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 1998* (Mar. 1999) (GAO/AIMD-99-105); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 1999* (Sept. 1999) (GAO/AIMD-99-292); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 1999* (Mar. 2000) (GAO/AIMD-00-120).

<sup>3</sup> U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2000* (Sept. 2000) (GAO/AIMD-00-310); U.S. Government Accountability Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 2000* (Mar. 2001) (GAO-01-505); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2001* (Sept. 2001) (GAO-01-1035); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 2001* (Mar. 2002) (GAO-02-443); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2002* (Sept. 2002) (GAO-02-1068); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 2002* (Mar. 2003) (GAO-03-445); U.S. General Accounting Office, *Financial*

Even more perplexing are expenditures incurred after the three-judge panel overseeing your investigation ordered in March 2003 that your office close down.<sup>4</sup> From April 2003 through March 2005, the end of the latest reporting period, your investigation expended taxpayer dollars at a rate of \$2 million dollars a year. This high level of spending does not appear consistent with statements by your office that expenditures in that time frame “principally relate[d] to preparing the final report for submission to courts and to closing the office.”<sup>5</sup> It is particularly difficult to understand how your investigation could justify expenditures during that time frame of over \$125,000 on travel, over \$600,000 for contractual services, and over \$1.7 million on personnel compensation and benefits.

In August 2004, your office filed its final report with the three-judge panel.<sup>6</sup> According to GAO, in the six-month reporting period that followed that filing, you were “awaiting a determination by the [three-judge panel] whether to release the final report to the public.”<sup>7</sup> Yet during those six months, your office expended nearly \$1 million, including \$24,000 for travel, over \$460,000 for compensation and benefits, and over \$100,000 for contractual services.<sup>8</sup>

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*Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2003* (Sept. 2003) (GAO-03-1098); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 2003* (Mar. 2004) (GAO-04-525); U.S. Government Accountability Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2004* (Sept. 2004) (GAO-04-1014); U.S. Government Accountability Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 2004* (Mar. 2005) (GAO-05-359); Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2005* (Sept. 2005) (GAO-05-961).

<sup>4</sup> See *It's Time to Finish Inquiry into Cisneros, Counsel Told; Lawyer Has Spent Nine Years and Nearly \$19 Million Investigating Former HUD Secretary*, Los Angeles Times (Apr. 11, 2003).

<sup>5</sup> See, e.g., Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended September 30, 2004*, 11 (March 2005) (GAO-05-359).

<sup>6</sup> Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2005*, 10 (Sept. 2005) (GAO-05-961).

<sup>7</sup> E.g., Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2005*, 9 (Sept. 2005) (GAO-05-961).

<sup>8</sup> Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2005*, 9 (Sept. 2005) (GAO-05-961).

These and other examples of questionable spending have resulted in significant public concerns about potential waste and abuse by your office.<sup>9</sup> Unfortunately, your office to date has failed to disclose the financial data necessary to resolve these concerns. GAO's semi-annual reports on independent counsel expenditures provide only summary information about your spending, providing expenditure levels only in broad categories: personnel compensation and benefits; travel; rent, communications, and utilities; contractual services; supplies and materials; and administrative services.<sup>10</sup> Further, as GAO has made clear, its semi-annual reviews of independent counsels do not "express an opinion on the reasonableness or appropriateness of any related expenditures" but instead assess whether the expenditures were "fairly stated."<sup>11</sup>

#### **GAO's December 8, 2005, Letter**

In light of the unanswered questions about your investigation's costs, last May I asked GAO for breakdowns of certain expenditures beyond what is contained in the semi-annual reports on costs incurred by your office. In response, on December 8, 2005, GAO provided me with additional information concerning the most recent six-month review period for categories including travel, contractual services, personnel compensation, and rent.<sup>12</sup> The additional information I received increased my concerns about how your office has disposed of taxpayer funds.

According to GAO's December 8 letter, your office leased 11,500 square feet of office space in Washington, D.C., between October 1, 2004, and March 31, 2005.<sup>13</sup> During this time, your office had only five full-time employees.<sup>14</sup> This means that the average amount of office

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<sup>9</sup> See *Make Him Stop*, Washington Post (Oct. 12, 2005); *10 Years and Counting*, New York Times (Oct. 6, 2005); *Wasting Money on a Case that Should Have Ended Years Ago*, Austin-American Statesman (Oct. 6, 2005); *Fish or Cut Bait in the Cisneros Case*, Atlanta Journal-Constitution (June 7, 2005); *Justice at \$2 Million a Year*, New York Times (May 25, 2005); *Special Prosecutor a Disgusting Abuse; That David Barrett Was Allowed Eight Years and \$19 million to 'Investigate' Henry Cisneros Is Ridiculous*, San Antonio Express-News (Apr. 14, 2003); *Enough Is Enough*, Fort Worth Star-Telegram (Apr. 12, 2003).

<sup>10</sup> Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2005*, 10 (Sept. 2005) (GAO-05-961).

<sup>11</sup> Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2005*, 1 (Sept. 2005) (GAO-05-961).

<sup>12</sup> Letter from Steven Sebastian, Director, Financial Management and Assurance, GAO, to Rep. Henry A. Waxman and Sen. Byron L. Dorgan (Dec. 8, 2005).

<sup>13</sup> *Id.*, Enclosure IV, Office Space Utilization from October 1, 2004, through March 31, 2005.

space for each of your full-time employees (approximately 2300 square feet) was more than the entire square footage of a typical single family American home (1821 square feet).<sup>15</sup>

The December 8 letter states that the current lease for 11,500 square feet of office space commenced on December 6, 2001.<sup>16</sup> Because you have not released data on the total number of personnel your office has employed for time periods before October 2004 through March 2005, it is not possible for me to determine precisely how many employees used this office space throughout the entire time of the lease to date. However, the total personnel compensation costs your office reported for the October 2004 through March 2005 time period is comparable to the total personnel compensation costs reported in each of the other six-month periods within the time frame of the lease. In fact, with the exception of one six-month reporting period, the total personnel compensation reported for October 1, 2004, through March 31, 2005, was higher than the total personnel compensation reported for each of the other six-month periods within the time frame of the lease.<sup>17</sup>

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<sup>14</sup> *Id.*, Enclosure III, Personnel Compensation Expenditures from October 1, 2004, through March 31, 2005 (listing eight employees but noting that two of the eight were “intermittent” employees and a third works “60 hours every two weeks”). It is also not clear from the information provided in the December 8 letter whether all of the five full-time employees always work in the rented office space.

<sup>15</sup> According to the most recent U.S. national housing survey by the Bureau of the Census for the Department of Housing and Urban Development, the median size for a single family owner-occupied American home is 1821 square feet. American Housing Survey, Table 1A-3, *Size of Unit and Lot – All Housing Units* (2003) (online at <http://www.census.gov/hhes/www/housing/ahs/ahs03/tab1a3.htm>).

<sup>16</sup> Letter from Steven Sebastian, *supra* note 12, at Enclosure IV, Office Space Utilization from October 1, 2004, through March 31, 2005.

<sup>17</sup> The total was \$464,009 for October 1, 2004, through March 31, 2005; \$452,880 for April 1, 2004, through September 30, 2004; \$436,989 for October 1, 2003, through March 31, 2004; \$373,499 for April 1, 2003, through September 30, 2003; \$440,364 for October 1, 2002, through March 31, 2003; \$502,696 for April 1, 2002, through September 30, 2002; and \$374,792 for October 1, 2001, through March 31, 2002. U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2002* (Sept. 2002) (GAO-02-1068); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 2002* (Mar. 2003) (GAO-03-445); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2003* (Sept. 2003) (GAO-03-1098); U.S. General Accounting Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 2003* (Mar. 2004) (GAO-04-525); U.S. Government Accountability Office, *Financial Audit: Independent Counsel Expenditures for the Six Months Ended March 31, 2004* (Sept. 2004) (GAO-04-1014); U.S. Government Accountability Office, *Financial Audit:*

The information in the December 8 GAO letter on travel costs also raises questions. GAO reported that between October 1, 2004, and March 31, 2005, your office paid for five round trips to Washington, D.C., for a paralegal from Colorado Springs, Colorado, and three round trips to Washington, D.C. for “legal consultants” from San Francisco.<sup>18</sup> It is unclear why, in light of the wealth of legal expertise available in Washington, D.C., it would be necessary to spend thousands of dollars to fly in paralegals and legal consultants from across the country.

In addition, several individuals in your office received significant compensation and benefits during the October 2004 through March 2005 period for which GAO provided additional information. For example, during this time frame, you received \$85,719 in compensation and benefits, which is an annual rate of over \$170,000 a year. While it is impossible to assess definitively whether this and the other reported compensation and benefits figures are reasonable without knowing how many hours employees of your office worked, it is difficult to understand how your office could have expended over \$460,000 on personnel compensation and benefits in the six months from October 2004-March 2005 given that your office had already filed its final report and reportedly was closing down.

### Questions

I understand from GAO that you declined to provide certain information I had requested in May 2005, such as the hourly rates paid to consultants and the nature of the services they performed. Indeed, according to GAO, you asserted that disclosing the information I sought concerning your travel, contracting, and personnel expenditures would “not assist the Congress, nor the American public, in determining whether funds have been used responsibly and efficiently.”<sup>19</sup>

According to GAO, you defended your resistance to oversight by arguing that you have been making the disclosures regarding your office’s expenditures that are required by the Independent Counsel statute. However, I understand from GAO that with respect to the statutory requirement to report to the three-judge panel on expenditures, your office has simply provided the panel with the same information that is in GAO’s semi-annual reports, along with projections

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*Independent Counsel Expenditures for the Six Months Ended September 30, 2004* (Mar. 2005) (GAO-05-359); U.S. Government Accountability Office, *Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2005*, 10 (Sept. 2005) (GAO-05-961).

<sup>18</sup> Letter from Steven Sebastian, *supra* note 12, Enclosure I, Travel Expenditures from October 1, 2004, through March 31, 2005. The GAO letter states that your office paid for five trips for a paralegal from Colorado Springs, Colorado at a cost of \$7,835, two trips for a legal consultant from San Francisco at a cost of \$4,125, and one trip for another legal consultant from San Francisco at a cost of \$3,380. *Id.*

<sup>19</sup> Letter from Steven Sebastian, *supra* note 12, at 2.

of expected expenditures. Moreover, the annual two-page letter reports you have sent to Congress pursuant to the statute have contained even less information than what is in the GAO reports and have been abjectly deficient with respect to providing public justification for your office's expenditures.<sup>20</sup>

It is difficult to accept your opposition to responsible oversight of your expenditures. It is virtually impossible for any member of Congress or the public to assess the reasonableness of your office's expenditures without reviewing basic data underlying the expenditures. Your efforts to withhold your office's financial data from public view have only enhanced the appearance that your office may have abused taxpayer funds.

Given that you are now closing your office and your final report will be released in a matter of days, there should be no reason for concern that disclosing financial data would compromise your investigation. Therefore, I ask that you take this opportunity to provide a detailed public accounting regarding your office's expenditures. Specifically, please respond to the following questions:

#### Rent Questions

(1) The December 8 GAO letter states that your office has leased 11,500 square feet of space at 1990 K Street through two leases, the first beginning on February 7, 1997, and the second on December 6, 2001. For each of the years covered by the two leases starting from February 7, 1997, through the present, please explain why 11,500 square feet of office space at 1990 K Street was necessary for your investigation. Please also describe the number of full-time employees and the number of part-time employees that worked in that space during each of those years.

(2) Did you or anyone else ever use the office space leased for your investigation at 1990 K Street for any purpose other than your independent counsel investigation?

#### Travel Questions

(3) In the six months between October 2004 and March 2005 your office paid for trips to Washington, D.C., by legal consultants from San Francisco and a paralegal in Colorado Springs, Colorado. Please state the names of these individuals and explain what expertise they provided that you could not find in Washington, D.C.

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<sup>20</sup> These letters to Congress simply have briefly described your office's activities and asserted summary conclusions about spending such as "I continue to operate this Office in a responsible and cost-effective manner." *E.g.*, Letter from David M. Barrett, Independent Counsel, to Richard B. Cheney, Vice President of the United States and J. Dennis Hastert, Speaker of the House of Representatives (Dec. 9, 2002).

(4) In the time since the March 2003 order by the three-judge panel to close down your investigation, your office spent over \$125,000 on travel. Please provide the following information about each trip funded by your office from March 2003 through the present: the purpose, the dates of departure and return, the destination, and the cost of the travel, lodging, and per diem for each individual who traveled.

(5) The travel information reported in GAO's December 8 letter indicates that your office was paying the deputy independent counsel's lodging expenses for the six-month period between October 2004 and March 2005. For how long and for what total cost did your office fund this individual's lodging in the District of Columbia? What expertise did this individual have for the deputy independent counsel position that you could not find in an individual who already lives in the Washington metropolitan area?

Contractual Services Questions

(6) Since the March 2003 order from the three-judge panel to close your investigation, your office spent over \$600,000 in contractual services. For each contract your office entered into during this time period, please describe the parties, the nature of the task, the dates during which the contract was performed, the contract type, the hourly rate paid for services rendered if applicable, the total amount paid under the contract, and the total amount obligated under the contract; and the same information for any subcontracts.

Personnel and Compensation Questions

(7) For each year of your investigation, please provide the title and job descriptions of all employees that worked for your office, and for each employee provide the number of hours per week each worked, annual compensation, and annual benefits.

I ask that you respond to these questions no later than February 3, 2006. Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman  
Ranking Minority Member